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Committee on Economic, Social and Cultural Rights

Sixty-first session

Summary record of the second part (public)* of the 43rd meeting**
Held at the Palais Wilson, Geneva, on Wednesday, 21 June 2017, at noon.

Chair: Ms. Bras Gomes

Contents

Miscellaneous matters

Informal meeting with States

* No summary record was prepared for the first part (closed) of the meeting.
** No summary records were issued for the 33rd to 42nd meetings.

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The meeting was called to order at noon

Miscellaneous matters

Informal meeting with States

1. **The Chair** said that she was pleased to welcome the representatives of both States parties and States that were not parties to the Covenant and hoped that the latter would be inspired to sign and/or ratify the Covenant at some point in the future. Although such meetings had previously been held once a year, it was now hoped that they would take place every session to enable the Committee to report on what it had accomplished and to receive feedback and questions from State representatives.

2. During the current session, the Committee had adopted its general comment No. 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities. Work had begun on a new general comment on the right to science, which was being prepared under article 15 of the Covenant and would be discussed with States when an initial draft had been produced.

3. The Committee had adopted a new follow-up procedure whereby States parties that had presented a report to the Committee would be asked to provide information within 18 months of the issuance of the Committee's concluding observations on three issues identified as requiring urgent attention. As that procedure was in line with the procedures used by other committees, its adoption would help to harmonize committee practices.

4. To date, 9 of the 22 communications registered under the Optional Protocol were still pending, while decisions had been reached on the other 13. The Committee had also adopted a provisional procedure for follow-up to its Views under the Optional Protocol to the Covenant.

5. **Mr. Genov** (Bulgaria) said that he would welcome information on the main challenges faced by States parties during the current session, as that would help his Government to prepare for its appearance before the Committee.

6. **Ms. Anderson** (Canada) said that she would welcome further information on the main thrust of the new general comment on the right to science and would like to know when the Committee proposed to discuss that general comment with State representatives.

7. **The Chair** said that it was too early to say when it might be possible to discuss the new general comment. With regard to the question asked by the representative of Bulgaria, she would like to explain that, when dealing with States parties that had already appeared before it on several occasions, the Committee focused on issues that had not yet been fully resolved. To enhance the focus of its dialogues, the Committee would be piloting a simplified reporting procedure in the near future under which certain States parties would be provided with lists of issues prior to reporting. All States parties had been asked about the practical difficulties that had prevented them from fully implementing the Covenant. Such difficulties could be legal or financial in nature or could be due to a lack of data, a lack of human-rights-based impact assessments or the failure of certain programmes to resolve the problems they had been intended to address. The dialogues had been shaped by the degree of economic, social and cultural development of each State party and by each State party's perception of the rights enshrined in the Covenant.

8. **Mr. Mancisidor de la Fuente** (Rapporteur for the draft general comment), noting that the general comment on the right to science was at a very early stage of development, said that any indications he could give about its content might not coincide with the final version that would be adopted by the Committee. It was the Committee's intention to produce a general comment that addressed every aspect of science covered by article 15 of the Covenant. The general comment would deal with the right to enjoy the benefits of scientific progress and its applications, in accordance with paragraph 1 (b) of article 15, and the legislation required to uphold the rights enshrined in paragraphs 2, 3 and 4 of the same article. It would, in particular, focus on the right of scientists, experts and ordinary citizens to participate in scientific activities and in the development of public policy on science and technology and on the management of the attendant risks; the right to enjoy the benefits of scientific progress and its applications, in accordance with paragraph 1 (b) of article 15; the

right to gain access to scientific knowledge through formal and informal education; the actions undertaken by States to disseminate scientific knowledge; the obligation of States parties to respect the freedom that was essential for scientific research and creative activity, in accordance with paragraph 3 of article 15; and the importance of international cooperation in the field of science.

9. The Committee would ensure that the general comment would be developed in collaboration with States parties and with the international scientific community. Although he could not give a precise indication of when it would be possible to discuss the first draft with interested States, he believed that it should be possible to do so some time in the first half of 2018. In the meantime, he would welcome any contributions from State representatives concerning the general comment.

10. **Mr. De Schutter** (Rapporteur for general comment No. 24) said that the general comment which the Committee had just adopted complemented the Guiding Principles on Business and Human Rights, which had been endorsed by the Human Rights Council in June 2011. The Guiding Principles were a set of recommendations that were independent of the legal obligations arising from the treaties to which States were parties. Therefore, they were not intended to halt the development of international law on human rights or to be a substitute for the international obligations assumed by States upon their ratification of human rights treaties. In drafting its general comment No. 24, the Committee had not taken a position on the ongoing debate on the adoption of a new, legally binding instrument on the issue of transnational corporations and other business enterprises with respect to human rights. However, general comment No. 24 stated that improved international cooperation should reduce the risks of positive and negative conflicts of jurisdiction, which might result in legal uncertainty and in forum-shopping by litigants, or in victims' inability to obtain redress. There was currently a greater awareness that, in cases involving a failure to fulfil transnational human rights obligations, a lack of cooperation between States might make it more difficult for victims to obtain remedies, either from courts in the State where a violation had taken place or from courts where the transnational corporation was domiciled.

11. The question of whether States parties had a duty under the Covenant to control the activities, in foreign territories, of actors over which they had jurisdiction had been discussed at length during the drafting of general comment No. 24. The Committee had reached the conclusion that the State in which a corporation had its statutory seat had a duty to ensure that the corporation in question did not violate Covenant rights in any part of the world. The stance taken by the Committee on the transnational legal obligations of States had also been adopted by other committees. For instance, in its general comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights, the Committee on the Rights of the Child had stipulated that States should also monitor corporations that had substantial business operations within their borders (CRC/C/GC/16, section V.C).

12. The adoption by the General Assembly of the Sustainable Development Goals and the 2030 Agenda for Sustainable Development had influenced the work of the Committee. During its dialogues with States parties, the Committee had come to realize that the promotion of the rights enshrined in the Covenant could contribute to the achievement of the Sustainable Development Goals in three ways. Firstly, when Governments were made fully accountable for the protection of Covenant rights, they would be guided by the need to enhance the well-being of the population. Secondly, the adoption by States of a rights-based approach to social protection and other social benefits reduced the risk of discrimination and corruption and made it less likely that vulnerable sectors of the population would be excluded from social safety nets. Finally, the Committee supported the Sustainable Development Goals initiative because, as States strove to achieve the Goals, they would necessarily be supporting other States' efforts to uphold Covenant rights and the right to development. Under the Covenant, States were expected to make decisions and to exercise their voting rights as members of international organizations with a view to ensuring the fulfilment of economic, social and cultural rights, thereby helping to overcome the fragmentation of international law and global governance structures.

13. **Ms. Leija Regalado** (Mexico) said that her Government remained committed to implementing the Covenant and cooperating with the Committee. It was disappointed,

however, that the Committee had been unable to accommodate its request regarding the date on which it would present its combined fifth and sixth periodic reports and feared that the quality of the dialogue between the Mexican delegation and the Committee would be adversely affected as a result. The Committee and the other human rights treaty bodies should consider adjusting their methods of work so as to better take into account the scheduling constraints faced by States parties.

14. **The Chair** said that the Committee had done its best to accommodate the Mexican Government's wishes but had been unable to schedule the dialogue for the final week of its sixty-second session, as requested, because doing so would have left insufficient time for the drafting, translation and adoption of its concluding observations on the States parties' reports. It was important to bear in mind that the Committee, too, faced practical constraints. The Mexican Government could rest assured that the scheduling problem would not affect its relationship with the Committee.

15. **Mr. Sadi** said that one of the main challenges faced by the Committee was the failure of many States parties to ensure that the provisions of the Covenant could be directly invoked in domestic courts in accordance with the Committee's general comment No. 9 on the domestic application of the Covenant.

16. **Mr. Uprimny** said that the Committee had received and registered 22 individual communications under the Optional Protocol to the Covenant. It had declared 10 of those cases inadmissible for procedural reasons and had adjudicated on the merits of 3 cases, finding violations in 2. During its discussions on communications, the Committee had reached decisions on a number of procedural matters, such as third-party interventions, and had clarified its jurisprudence with regard to issues such as the scope of rights under the Covenant. It had tried to strike a balance between affirming the rights of complainants and acknowledging the difficulties faced by States parties. To date, only 22 States parties had ratified the Optional Protocol, and he wished to encourage all States parties to consider doing so.

17. **Ms. Shin**, referring to the recently introduced procedure for follow-up to concluding observations mentioned earlier by the Chair, said that, firstly, since some human rights treaty bodies had already introduced similar approaches, it would be helpful if States could provide feedback to the Committee on the positive and negative aspects of those procedures. Secondly, she would be interested to learn about any obstacles that were preventing States that had not yet ratified the Optional Protocol from doing so.

18. **Mr. Kedzia** said that the Committee was concerned about the number of initial reports that were overdue and about the significant delays in the submission of periodic reports. Those problems appeared to be due to some of the challenges posed by the reporting procedure. The Committee would appreciate advice on any steps that it might take to help Governments to address those difficulties. It was his understanding that the Chair, in particular, would welcome feedback on that issue prior to the forthcoming meeting of Chairs of the human rights treaty bodies in New York.

19. **Mr. Abdel-Moneim**, in response to the question raised by the representative of Bulgaria, said that the Covenant provided for the progressive implementation of its provisions and that States parties were not required to report on any issues that were beyond the scope of the Covenant. There were certain constraints that posed a problem for reporting States: reports were now subject to stricter word limits than they had been previously and the Committee's dialogue with each reporting State had been compressed into two meetings rather than three, for example. States should update their core documents regularly to ensure that the Committee had access to accurate information about their overall situation.

20. **Ms. Anderson** (Canada) said that her country was up-to-date with its reporting obligations under the Covenant, despite the challenges that it faced as a large country with many provincial and territorial governments. It was considering ratifying the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and regularly reviewed the possibility of ratifying other instruments, such as the Optional Protocol to the Covenant. One problem sometimes encountered in the preparation and submission of reports was that some committees had

sent their lists of issues far in advance of the scheduled dialogue. As a result, the Government's replies had not covered the developments that had occurred in the period leading up to the dialogue. She wished to invite the Chair to raise that issue with the other Chairs of the human rights treaty bodies.

21. **The Chair** said that the opportunity to use the simplified reporting procedure had been offered to a particular group of States parties on the basis of certain criteria. In the future, it would be offered to a wider range of countries. States parties wishing to adopt the new procedure would receive further information about it in due course. In the past, the Committee had perhaps dispatched lists of issues early in an effort to tackle its reporting backlog. That backlog had now been eliminated, so the issue should not arise again.

22. The Committee was keen to maintain an ongoing dialogue with all States, and she wanted to thank the participants for their attendance. In closing, she wished to invite all States not parties to the Covenant to initiate the ratification process and all the States parties that had not yet ratified the Optional Protocol to consider doing so.

The meeting rose at 12.55 p.m.